UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT KIM,	)	
Plaintiff,	)	
vs.	)	Case No.: 4:14-CV-00291
CITY OF BRIDGETON, MISSOURI,	)	
BRANDIN RANEY,	)	
AND	)	
LEAH HALL,	)	
Defendants.	)	

ANSWER OF CITY OF BRIDGETON, MISSOURI

COMES NOW Defendant, the City of Bridgeton, Missouri ("Defendant" or "Bridgeton"), and for its Answer to Plaintiff's First Amended Complaint, states:

1. Defendant denies the allegations contained in paragraph 1.
2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 2.
3. Defendant admits it is a Missouri municipality organized and existing under the laws of the State of Missouri and located in St. Louis County. The Bridgeton Police Department is a department within the City of Bridgeton, Missouri. The remainder of the allegations contained in paragraph 3 are legal conclusions reserved for this Court's ruling and to which no answer is required. Defendant admits it has in the past

received different types of federal funds. To the extent this paragraph alleges other facts against Defendant, the remainder are denied.

4. Defendant admits the allegations contained in paragraph 4.
5. Defendant admits the allegations contained in paragraph 5.

Jurisdiction and Venue

6. Defendant admits Plaintiff purports to state a cause of action pursuant to the laws cited in the Complaint. The Defendant denies the remainder of the allegations contained in paragraph 6.
7. Defendant admits Plaintiff invokes the venue of this court, but denies the remainder of the allegations contained in paragraph 7.

Allegations Common to All Counts

8. Upon information and belief, Defendant admits the first sentence of paragraph 8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 8.
9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 9.
10. Defendant admits that Plaintiff's car was stopped on the shoulder of the highway. Defendant denies the remainder of the allegations contained in paragraph 10, as phrased.
11. Defendant admits the allegations contained in paragraph 11.
12. Defendant admits the allegations contained in paragraph 12.
13. Defendant admits the allegations contained in paragraph 13.

14. Denied as phrased. Defendant admits Officer Leah Hall did notice hearing aids in Plaintiff's ears. Defendant denies the remainder of the allegations in paragraph 14, as phrased.
15. Defendant denies the allegations contained in paragraph 15.
16. Defendant admits the allegations contained in paragraph 16.
17. Defendant admits the allegations contained in paragraph 17.
18. Defendant admits the allegations contained in paragraph 18.
19. Denied as phrased. Defendant admits that at least part of the time while Officer Hall waited for assistance from Officer Raney, plaintiff was seated. Defendant denied the remaining allegations contained in paragraph 19.
20. Defendant denies the allegations contained in paragraph 20.
21. Defendant denies the allegations contained in paragraph 21.
22. Defendant denies the allegations contained in paragraph 22.
23. Defendant denies the allegations contained in paragraph 23.
24. Defendant denies the allegations contained in paragraph 24.
25. Defendant admits Officer Raney deployed his Taser device on Plaintiff to control Plaintiff's irrational and dangerous behavior. The remainder of the allegations contained in paragraph 25 is denied, as phrased.
26. Defendant admits Plaintiff was handcuffed. Defendant denies the remaining allegations contained in paragraph 26.
27. Defendant admits Plaintiff was Tasered for the safety and protection of Plaintiff, the Defendant Officers and the public. Defendant denies the remainder of the allegations contained in paragraph 27.

28. Defendant denies the allegations contained in paragraph 28.

29. Defendant denies the allegations contained in paragraph 29.

30. Defendant admits Patrol Officers Hall and Raney did not stop traffic or redirect traffic as there was no reason or need to do so. The remainder of the allegations contained in paragraph 30 are denied.

31. Defendant denies the allegations contained in paragraph 31.

32. Defendant denies the allegations contained in paragraph 32, including the phraseology.

33. Defendant denies the allegations contained in paragraph 33.

34. Defendant denies the allegations contained in paragraph 34.

35. Defendant denies the allegations contained in paragraph 35.

36. Defendant denies the allegations contained in paragraph 36.

37. Defendant admits Plaintiff was taken for medical care and transferred by EMS personnel to DePaul Health Center. Defendant denies the remainder of the allegations contained in paragraph 37.

38. Defendant admits the allegations contained in paragraph 38.

39. Defendant denies the allegations contained in paragraph 39.

40. Defendant denies the allegations contained in paragraph 40.

41. Defendant denies the allegations contained in paragraph 41, including all subparts.

42. Defendant denies the allegations contained in paragraph 42.

43. Defendant denies the allegations contained in paragraph 43.

44. Defendant denies the allegations contained in paragraph 44.

45. Defendant denies the allegations contained in paragraph 45.

46. Defendant denies the allegations contained in paragraph 46.

47. Defendant denies the allegations contained in paragraph 47.

48. Defendant denies the allegations contained in paragraph 48.

COUNT I
Violations of Section 504 of the Rehabilitation Act of 1973 – 29 U.S.C. § 794
(Against Defendant City of Bridgeton, Missouri)

49. Defendant re-alleges and incorporates by reference the above allegations set forth in this Complaint as if fully set forth herein.

50. Defendant denies the allegations made in paragraph 50.

51. Defendant denies the allegations made in paragraph 51.

52. Paragraph 52 is a conclusion of law reserved for this Court's judgment. To the extent it alleges facts against Defendant, it is denied.

53. Paragraph 53 is a conclusion of law reserved for this Court's judgment. Defendant admits it has received some types of federal funds in the past. To the extent it alleges any facts against Defendant, the remainder is denied.

54. Paragraph 54 is a conclusion of law reserved for this Court's judgment. To the extent it alleges facts against Defendant, it is denied.

55. Defendant denies the allegations contained in paragraph 55.

56. Defendant denies the allegations contained in paragraph 56, including all subparts.

57. Defendant denies the allegations contained in paragraph 57.

58. Defendant denies the allegations contained in paragraph 58.

59. Defendant denies the allegations contained in paragraph 59.

60. Defendant denies the allegations contained in paragraph 60.

61. Defendant denies the allegations contained in paragraph 61.

WHEREFORE, Defendant respectfully requests that this Court dismiss this Count of Plaintiff's Complaint, for attorney's fees, costs, and for such further relief this Court deems just and proper.

COUNT II
Violations of Title II of the Americans with Disabilities Act – 42 U.S.C. §§ 12131 *et seq.*
(Against Defendant City of Bridgeton, Missouri)

62. Defendant re-alleges and incorporates by reference the above allegations set forth in this Complaint as if fully set forth herein.

63. Defendant admits the allegations contained in paragraph 63.

64. Defendant denies knowledge or information sufficient to form a belief as to whether Congress passed such laws "in response to these findings." Defendant admits the following are the purported purposes of the chapter:

    (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
    (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
    (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and
    (4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

    All other allegations contained in paragraph 64 are denied.

65. Defendant admits 42 U.S.C. § 12132 so states in part.

66. Defendants deny this is a full and accurate recreation of 28 C.F.R. § 35.160. This is a legal statement reserved for this Court's interpretation. To the extent it alleges facts against this Defendant, it is denied.

67. Defendants deny this is a full and accurate recreation of 28 C.F.R. § 35.163(b). This is a legal statement reserved for this Court's interpretation. To the extent it alleges facts against Defendant, it is denied.
68. Paragraph 68 is a legal conclusion reserved for this Court's determination and to which no answer is required. To the extent this alleges facts, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68.
69. Paragraph 69 is a legal conclusion reserved for this Court's determination to which no answer is required. To the extent this alleges facts against Defendant, it is denied within the context and allegations raised by Plaintiff.
70. Defendants deny this is a full and accurate recreation of 42 U.S.C. § 12132. This is a legal statement reserved for this Court's interpretation and to which no answer is required. To the extent it alleges facts against Defendant, it is denied.
71. Paragraph 71 is a legal conclusion reserved for this Court's determination. To the extent this alleges facts against Defendant, it is denied within the context and allegations raised by Plaintiff.
72. Defendant denies the allegations contained in paragraph 72.
73. Defendant denies the allegations contained in paragraph 73.
74. Defendant denies the allegations contained in paragraph 74.
75. Defendant denies the allegations contained in paragraph 75, including all subparts.
76. Defendant denies the allegations contained in paragraph 76.
77. Defendant denies the allegations contained in paragraph 77.
78. Defendant denies the allegations contained in paragraph 78.

WHEREFORE, Defendant respectfully requests that this Court dismiss this Count of Plaintiff's Complaint, for attorney's fees, costs, and for such further relief this Court deems just and proper.

COUNT III
Violations of 42 U.S.C. § 1983
(Against Defendant City of Bridgeton, Missouri)

79. Defendant re-alleges and incorporates by reference the above allegations set forth in this Complaint as if fully set forth herein.
80. Defendant denies the allegations contained in paragraph 80, including all subparts.
81. Defendant denies the allegations contained in paragraph 81.
82. Defendant denies the allegations contained in paragraph 82.
83. Defendant denies the allegations contained in paragraph 83.
84. Defendant denies the allegations contained in paragraph 84.
85. Defendant denies the allegations contained in paragraph 85.
86. Defendant denies the allegations contained in paragraph 86, including all subparts.
87. Defendant denies the allegations contained in paragraph 87.
88. Defendant denies the allegations contained in paragraph 88.
89. Defendant denies the allegations contained in paragraph 89.

WHEREFORE, Defendant respectfully requests that this Court dismiss this Count of Plaintiff's Complaint, for attorney's fees, costs, and for such further relief this Court deems just and proper.

COUNT IV
Violations of 42 U.S.C. § 1983
(Against Defendants Leah Hall and Brandin Raney)

90. Defendant re-alleges and incorporates by reference the above allegations set forth in this Complaint as if fully set forth herein.
91. Defendant denies the allegations contained in paragraph 91.
92. Defendant denies the allegations contained in paragraph 92.
93. Defendant denies the allegations contained in paragraph 93.
94. Defendant denies the allegations contained in paragraph 94.
95. Defendant denies the allegations contained in paragraph 95.
96. Defendant denies the allegations contained in paragraph 96, including all subparts.
97. Defendant denies the allegations contained in paragraph 97.
98. Defendant denies the allegations contained in paragraph 98.
99. Defendant admits Defendants Hall and Raney acted under the color of state law. Defendant denies the remainder of the allegations contained in paragraph 99.

WHEREFORE, Defendant respectfully requests that this Court dismiss this Count of Plaintiff's Complaint, for attorney's fees, costs, and for such further relief this Court deems just and proper.

COUNT V
Battery

100. Defendant re-alleges and incorporates by reference the above allegations set forth in this Complaint as if fully set forth herein.
101. Defendant denies the allegations contained in paragraph 101.
102. Defendant denies the allegations contained in paragraph 102.
103. Defendant denies the allegations contained in paragraph 103.

WHEREFORE, Defendant respectfully requests that this Court dismiss this Count of Plaintiff's Complaint, costs, and for such further relief this Court deems just and proper.

COUNT VI
Intentional Infliction of Emotional Distress

104. Defendant re-alleges and incorporates by reference the above allegations set forth in this Complaint as if fully set forth herein.

105. Defendant denies the allegations contained in paragraph 105.

106. Defendant denies the allegations contained in paragraph 106.

107. Defendant denies the allegations contained in paragraph 107.

108. Defendant denies the allegations contained in paragraph 108.

WHEREFORE, Defendant respectfully requests that this Court dismiss this Count of Plaintiff's Complaint, costs, and for such further relief this Court deems just and proper.

AFFIRMATIVE DEFENSES

A. Defendant denies each and every other allegation in Plaintiff's Complaint not specifically admitted to herein.

B. Plaintiff's Amended Complaint should be dismissed for failure to state a cause of action or a claim upon which relief may be granted.

C. Plaintiff's Amended Complaint against the City of Bridgeton, Missouri, is barred by the doctrine of sovereign immunity, including but not limited to the fact that the Plaintiff has failed to allege and cannot prove any exception of sovereign immunity for state law intentional tort claims.

D. Plaintiff's Amended Complaint against Patrol Officers Hall and Raney in their official capacity are barred by operation of the doctrine of sovereign immunity.

E. Plaintiff's cause of action against Patrol Officers Hall and Raney are barred by operation of the doctrines of official immunity and qualified immunity.

F. Defendant cannot be liable to Plaintiff as the violation of rights of which Plaintiff complains were not clearly established on February 21, 2012.

G. Plaintiff's cause of action is barred as the accommodation requested by Plaintiff is either unnecessary or unreasonable and would constitute an undue burden and hardship on Defendant.

H. Plaintiff is himself at fault, including without limitation for failure to act in a manner consistent with good health, failing to conform his behavior to minimum acceptable social standards, failing to administer insulin at an appropriate time and in an appropriate manner.

I. Plaintiff fails to state a claim for relief for punitive damages and in addition, to the extent that plaintiff seeks to recover punitive damages herein, plaintiff has not stated and cannot state a claim for relief for punitive damages because the procedures for assessing punitive damages, facially and as applied to this case, violate the due process provisions of the Fourteenth Amendment of the United States Constitution and Article I, Section 10 of the Constitution of Missouri in that:

   a. Missouri's procedural and substantive law of punitive damages conflicts with the procedural and substantive standards set forth in the United States Supreme Court decisions in Pacific Life Insurance Co. v. Haslip; State Farm v. Campbell, White v. Ford Motor and Phillip Morris USA v. Williams.

   b. Missouri's guidelines, standards, procedures, and instructions for the imposition of punitive damages are ambiguous, indefinite, unreasonable, vague, uncertain, conflicting, purely subjective, and fundamentally unfair.

   c. Missouri has no objective limitations or standards that have been established concerning the amount or severity of a punitive damages award.

d. Missouri has vague and inconsistent legal standards for the imposition of punitive damages, which deprive defendant of sufficient notice of the type of conduct and mental state upon which punitive damages could be awarded as a result of defendant's alleged misconduct.

e. Missouri permits the jury to award punitive damages that are disproportionate and have no reasonable relationship to the actual damages, plaintiffs' injury, plaintiffs' expenses, defendant's conduct, and defendant's mental state.

f. Missouri courts review punitive awards on the theory that the magnitude of such awards is wholly and peculiarly within the discretion of the jury; this standard provides no meaningful standard basis for review of punitive awards by either the trial or appellate courts.

g. Missouri's trial court and appellate courts are bound to apply vague and inconsistent standards by which to evaluate the jury's punitive damages award. Specifically, these inadequate standards include:

   i. a nebulous and undefined "abuse of discretion" standard of review;
   ii. a nebulous and undefined standard under which a punitive damages award may be disturbed if it is the product of "bias and prejudice";
   iii. a standard that allocates undefined, inordinate, and improper discretion to the jury without providing the jury with adequate standards to guide their discretion;
   iv. a standard that is based upon an evaluation of the "proper relationship" between the degree of malice allegedly proven and the amount of the punitive damages award; however, no legal guidelines have been established that define the manner in which a court should evaluate either the degree or nature of the alleged "malice" or the "proper relationship" between such malice and the punitive damages award. Further, no legal standards have been established which reconcile and apply the different standards, set forth above, by which the trial and appellate courts review punitive damages awards.

h. Missouri improperly permits a plaintiff to submit punitive damages to the jury based upon a defendant's conduct that, as a matter of law, was not willful or reckless. Punitive damages are not constitutionally permissible for mere negligent conduct, assuming defendant's conduct even meets this standard.

i. Missouri's approved jury instructions for punitive damages do not provide the jury with sufficiently specific and objective standards to guide its discretion in awarding punitive damages. These instructions fail to inform the jury of its duty to consider the character and degree of the wrong as shown by the evidence. The instructions also fail to inform the jury that the defendant's net worth may not be considered in deciding whether to award punitive damages.

j. Missouri law does not contain adequate and objective procedures and standards or instructions that guide the jury, trial, and appellate courts concerning the purposes of punitive damages and the reasons for awarding such damages.

k. Missouri law does not have adequate standards and procedures to guide the trial and appellate courts in reviewing an excessive award of punitive damages.

l. Missouri courts are not required to explain the basis for their decisions concerning punitive damages awards; Missouri, therefore, affords no procedure for meaningful review of punitive damages by either the trial or the appellate courts.

m. Missouri does not provide adequate and objective standards and procedures to instruct the jury to ensure in the post-trial review by the trial and appellate courts that any punitive damages award has an understandable relationship to the actual or compensatory damages award.

n. Missouri does not require the standard of proof for the imposition of punitive damages to be "beyond a reasonable doubt."

o. Missouri does not provide objective standards and procedures to prevent the plaintiff from receiving an unfair windfall of money as a result of a punitive damages award.

p. Missouri does not have legal standards that would unconditionally prohibit in all cases an award of multiple punitive damages awards and punishments against a defendant who has already been subjected to punitive damages in a prior case based upon the identical or similar conduct. These multiple awards amount to civil and criminal fines and punishments and are prohibited under Article I, Section 21 of the Missouri Constitution and are also prohibited under the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Missouri Constitution.

q. Based on the Due Process Clause contained in Article I, Section 10 of the Missouri Constitution, a corporate defendant should not be held to be vicariously liable for acts or omissions of its agent without a showing of complicity.

r. An award of punitive damages under Missouri law violates the Eighth Amendment to the United States Constitution and Article I, Section 21 of the Constitution of Missouri, which prohibit excessive fines because fifty percent of any final judgment awarding punitive damages is payable to the State of Missouri under Mo. Rev. Stat. Ann. § 537.675. That portion of the punitive award therefore constitutes a fine payable to the State, but the State of Missouri has established no standards or limits upon the amount of punitive damages that may be awarded in a particular case, and has not provided procedural safeguards, including a requirement of proof beyond a reasonable doubt, necessary for imposition of fines.

J. Any claims made by Plaintiff against Defendant and the officers in their official capacity are barred by operation of the Eleventh Amendment of the U.S. Constitution.

K. Any force used against Plaintiff was the direct result of Plaintiff's own voluntary and consensual instigation of irrational, dangerous and threatening behavior, and his use of unreasonable force against Patrol Officers Hall and Raney, and thus and thereby, Plaintiff consented to the acts of Defendant and Patrol Officers Hall and Raney in defending themselves against the Plaintiff.

L. Defendants' actions were taken in their own self-defense or defense of others, and were therefore justified.

M. There is no fundamental right that was clearly established at the time of the events described in the Complaint for Plaintiff to disobey the law, disobey the commands and directions of a peace officer, and engage in criminal activity, and thus and thereby, plaintiff is not entitled to recover from the Defendant.

N. Neither the State of Missouri nor its officials acting in their official capacity are "persons" under 42 U.S.C. § 1983, therefore cannot be liable in their official capacity pursuant to any claims raised thereunder.

O. Any force used and any act of any defendant was undertaken pursuant to law and in the course of Patrol Officers Hall and Raney's official sworn duties as law enforcement officers, was reasonable and was based upon both probable cause and reasonable suspicion that Plaintiff had violated the laws and ordinances of the State of Missouri and the City of Bridgeton, Missouri, that every search, seizure, arrest, and detention of plaintiff took place pursuant to law and was reasonable in manner and duration.

P. Any force that was used against Plaintiff was reasonable and necessary in order to subdue the plaintiff due to Plaintiff's own unreasonable, unlawful, threatening and irrational conduct, including violently resisting his lawful arrest.

Q. Plaintiff had a duty to mitigate damages and failed to do so.

R. Patrol Officers Hall and Raney are protected by operation of the public duty doctrine.

S. To the extent the allegations can be construed as state claims against the City of Bridgeton, which is denied, Plaintiff is barred from suit as Defendant has adopted a home rule charter which was in place on February 21, 2012 (the date of the alleged incident), Defendant has a population under three thousand and more than one hundred thousand, and, pursuant to the Section 13.09 of the City Code, "No action shall be maintained against the City for or on account of any injury growing out of alleged negligence of the City unless notice shall first have been given in writing to the Mayor. Such notice shall be given within ninety (90) days of the occurrence for which said damage is claimed, and it shall state the place, time, character and circumstances of the injury and that the person so injured will claim damage therefor from the City." Plaintiff's claim against Defendant is barred as Plaintiff has failed to provide notice in accordance with said section.

T. Plaintiff's proposed modifications would amount to a fundamental alteration of the City of Bridgeton, Missouri's police department's services and programs.

U. Plaintiff's claim based on respondeat superior against City of Bridgeton is barred pursuant to federal laws invoked by Plaintiff.

V. Plaintiff lacks standing under the federal statutes cited, as discovery may determine.

W. Plaintiff may not recover as Plaintiff has not pleaded or proved similarly situated people were treated dissimilarly from Plaintiff.

X. Plaintiff's claims are barred by operation of the statute of limitations.

Y. Plaintiff consented to any battery that was necessary by his own illegal and threatening behavior and thereby consented to his lawful arrest.

WHEREFORE, Defendant respectfully requests that this Court dismiss Plaintiff's Complaint, for award of their attorney's fees, costs, and for such further relief this Court deems just and proper.

/s/Peter J. Dunne

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I hereby certify that a copy of the foregoing filed electronically with the Clerk of the Court this 1st day of April, 2014 to be served by operation of the Court's electronic filing system upon the following or U.S. mail for parties not registered with CM/ECF, on this 1st day of April, 2014:

/s/Peter J. Dunne